IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 7.2.2007

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THE HONOURABLE MR.JUSTICE R.SUDHAKAR

Writ Petition Nos.4920 to 4922 of 1999

1.Alagu
2.Dinakaran
3.Santhana Gounder ... Petitioners in W.P.No.4920 of 1999

Karuppanna Gounder ... Petitioner in W.P.No.4921 of 1999

Solaimalai Gounder ... Petitioner in W.P.No.4922 of 1999

-Vs.-

1.District Collector,
Madurai.

2.The Special Tahsildar
(Land Acquisition),
Adi Dravidars Welfare, Unit-I,
Collectorate Buildings,
Madurai. ... Respondents in all W.Ps.

Writ Petitions are filed under Article 226 of the Constitution of India praying for the issuance of writ of certiorari, calling for the records in the impugned Notification, Madurai District Special Gazette No.17, dated 27.11.98 issued by the first respondent and quash the above said order relating to an extent of 0.58.0 hec. of land comprised in S.No.31/3 (in W.P No.4920/99) 0.15.5. hec. of land comprised in S.No.31/2A (in WP No.4921/99) 0.15.5 hec. of land comprised in S.No.31/2B of Ayyur Village,Vadipatti Taluk, Madurai District (in WP No.4922/99) respectively.

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For petitioners in all W.Ps. : Mr.M.V.Venkateseshan

For respondents in all W.Ps. : Mr.A.Edvin Prabhakar, Government Advocate.

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COMMON ORDER

All the Writ Petitions are filed challenging the Notification dated 27.11.1998 issued under Section 4(1) of the Land Acquisition Act, in so far as the petitioners' lands are concerned.

2. W.P.No.4920 of 1999:- First petitioner for herself and on behalf of the petitioners 2 and 3 has filed the affidavit. It is stated that originally, the property, which is sought to be acquired, viz., 0.58.0 hectares (about 1.47 acres) of land in S.No.31/3 at Ayyur village, was in the name of Solaimalai Gounder. His three sons are,

1) Late Thirumal, the husband of the first petitioner;
2) Dinakaran, second petitioner and
3) Damodaran, vendor of the third petitioner.

After the death of Solaimalai Gounder, his three sons partitioned the lands. Thirumal expired in 1995. His death has been duly informed to the Revenue Officials. After oral partition and after the death of Thirumal, his wife the first petitioner is looking after his share. Likewise, the second petitioner is cultivating the land and paying kist for his share separately. Mr.Damodaran, sold his share to the third petitioner. After purchase, the third petitioner is paying kist in his own name. The revenue records however, remained in the name of the husband of the first petitioner, who died. But without ascertaining these facts, the Village Administrative Officer handed over a notice dated 28.2.1999 in Form No.III issued in the name of late Thirumal to the first petitioner. In the notice, second respondent informed that enquiry will be conducted on 16.3.1999. At this point of time only, the first petitioner came to know that the first respondent issued a Notification under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978) dated 27.11.1998 in a Special District Gazette bearing No.17 for acquiring the lands. The impugned Section 4(1) Notification and notice in Form No.I under Rule 3 has been issued in the name of dead person, viz., late Thirumal, the husband of the first petitioner. No notice was issued to all the petitioners in the writ petition. All the three petitioners claim title and ownership of the property and that they are the persons interested. Therefore, they claim that they should have been duly intimated by the authorities before they proceeded to acquire the lands in question. Therefore, the Notification issued under Section 4(1) of the Land Acquisition Act is challenged inter alia on the ground that the notice to the land owners as contemplated under Section 4(2) of the land Acquisition Act read with Rule 3 of the Tamil Nadu Land Acquisition for Harijan Welfare Schemes Rules, 1979 (Tamil Nadu Act 31/1978) has not been

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issued and therefore, the Notification has to be set aside.

3. W.P.Nos.4921 and 4922 of 1999:- The petitioners in both the writ petitions claimed to be the owners of the lands each to an extent of 38 cents, punja land at Ayyur village, Vadipatti Taluk, Madurai District in Survey Nos.31/2A and 31/2B respectively. It is stated that the Village Administrative Officer handed over a notice dated 28.2.1999 in Form No.III to the respective petitioners. In the notice, the second respondent called the petitioners for the enquiry to be conducted on 16.3.1999. It is only then that the petitioners came to know for the first time that the first respondent issued a Notification under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978) dated 27.11.1998 in a Special District Gazette bearing No.17 for acquiring the lands. Immediately they sent objections to the second respondent. Both the petitioners claimed to be the owners of the property and they are the persons interested and therefore, they should have been duly intimated by the authorities before proceeding to acquire the lands in question. Therefore, the Notification issued under Section 4(1) of the Land Acquisition Act is challenged inter alia on the ground that the notice to the land owners as contemplated under Section 4(2) of the land Acquisition Act read with Rule 3 of the Tamil Nadu Land Acquisition for Harijan Welfare Schemes Rules, 1979 (Tamil Nadu Act 31/1978) has not been issued.

4. In all these three writ petitions, no counter is filed. However, it is stated by the learned Government Advocate appearing for the respondents Department that Form No.I notice was issued on 3.7.1998 and such notice, according to the Department, could not be served on the petitioners and therefore, the same was pasted on a placard which was embedded on the lands belonging to the petitioners. The authorities could not identify the actual owners and therefore, the said notice was affixed in the lands in question in the manner aforesaid. This was stated on the basis of materials available in the record. Subsequently, Notification under Section 4 (1) of the Act was issued on 27.11.1998 and was published in the District Gazette. Form No.III Notice dated 28.2.1999 was served on the first petitioner in W.P.No.4920 of 1999 on 9.3.1999. Likewise Form No.III Notice dated 28.2.199 was served on the respective petitioners in W.P.Nos.4921 and 4922 of 1999 on 9.3.1999. First petitioner in W.P.No.4920 of 1999 and the respective Petitioners in W.P.Nos.4921 and 4922 of 1999 filed their objections to such notice. Award enquiry was conducted on 16.3.1999 and Award was passed on 25.3.1999.

5. All the Writ petitions were filed on 19.3.1999. This Court by order dated 25.3.1999 directed the Government Pleader to get the records in view of the short question involved (i.e.) with regard to

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service of notice. On 26.4.1999 while admitting the writ petitions, interim stay of dispossession alone was granted and the same was made absolute on 23.8.2003.

6. According to the petitioners, notice as contemplated under Section 4(2) of the Act 31 of 1978 has not been properly served on the owners of the lands sought to be acquired. Learned Government Advocate submits that the authorities did not know the whereabouts of the owners of the lands in question and therefore, the notice was served by way of affixture on a placard and embedded to the land sought to be acquired. The land in question is agricultural land and therefore, according to him, the authorities were under the impression that the land owner would come forward with their objections.

7. The provisions of the Act and Rules does not provide for service of notice in the manner aforesaid. The authorities should have made some attempt to find out the owners if they are not able to identify the persons concerned. The affixture of a notice in the land in question on a placard cannot be termed as a proper service of notice on the owners of the land. Nothing is placed on record to show that any attempt was made to identify the owners of the land before proceeding to paste the notice in the manner stated above.

8. In this regard it will necessary to refer to the instructions issued by the Government in matters relating to service of notice. The Government issued G.O.Ms.No.12, Revenue dated 3.3.1985 with regard to service of notices by affixtures, which reads as follows:-

> "The Special Commissioner and Commissioner of land Reforms has made the following general remarks in his Biennial Inspection of one of the Collectorates in the State:-
>
> > "Another grave fault, which I have noticed in land acquisition proceedings is that there is a tendency to by-pass one of the most important requirements, namely, service of the notices, etc. I found that in some cases, in their hurry, without ascertaining ownership of the land, there has been a tendency for service by affixtures, which normally, should be a last resort. This is highly reprehensible. It does not give the land-owner a chance to make a representation. The District Revenue Officers and the Collectors

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should look into this and see these are avoided in future."

2. In this connection, the attention of the Collectors/District Revenue Officers is invited to the following instructions in Chapter-II – Powers and Duties of the Collector under the Land Acquisition Act, in Part-III of the Land Acquisition Manual:-

> "It is a well established principle of law that all statutory provisions must be strictly complied with, and the burden of proof of compliance rests upon those who claim statutory powers or base their title upon the exercise of statutory provisions. The attitude of Civil Courts invariably is that acts of this character are to be liberally expounded in favour of the public and strictly expounded as against the State Government. It is necessary that Land Acquisition Officers should bear these facts in mind at every stage of their proceedings. Thus, for example, if general notices are not published or individual notices served as and when prescribed by the law, or any minimum interval required between two operations is not observed, all subsequent proceedings are thereby rendered invalid. A record of the publication or service of all notices must, therefore, be kept, since the burden of providing the same will be upon State Government in the event of the legality of the proceedings being subsequently contested."

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3. The above instructions have become all the more important now that the period from 4(1) notification and declaration has been cut down from three years to one year under the Land Acquisition (Amendment) Act, 1984 (Central Act 68 of 1984) and any procedural infringement at any stage of the land acquisition proceedings should not be tolerated.

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> 4. All the Collectors/District Revenue Officers are requested to look into this personally and see such lapses shall not recur in future and they are also requested to give instructions to all the Land Acquisition Officers to give in to the tendency to by-pass one of the most important requirement of the land acquisition proceedings, namely, the service of the notices, by affixture but to curtail this tendency and to adhere to the laid down procedures to the letter at all stages of land acquisition proceedings."

This instruction is binding on the authorities, but followed more in breach.

9. In respect of a challenge to Land Acquisition Act (I of 1894) in a case reported in 2000(2) M.L.J. 790 (P.Rajendran v. The District Collector, Salem and another), this Court held in paragraph 10 as follows:-

> "10. The question now is whether the same principle can be invoked here. There is no endorsement of refusal available on file. There is nothing to show as to who refused to receive, in which case, in my view there is not enough evidence to raise the presumption requisite to hold that the petitioner had refused to receive the notice and therefore he must be deemed to have knowledge of the contents of the notice. The mere recording by the Special Tahsildar that the petitioner had refused to receive notice, in my view, is not sufficient compliance of requirements regarding service of notice. There should have been a further attempt in a manner corresponding to section 45 of Act I of 1894 for service of notice on the petitioner. As already noticed, Section 20 of the Act only prohibits invoking the provisions of the Central Act for the purpose specified in Sub-section (1) of Section 4 with regard to acquisition of land under the Act and not with regard to service of notice. The requirements set out in Section 45, the Court view, can be imported for the purpose of service of notice on the owners of lands sought to be acquired under the Act. It is also to be further noticed that affixing a copy of the notice on the survey stones cannot also be said to be proper service." (emphasis supplied)

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The decision of the Court referred to above and the instructions of the Government only amplify the attitude of some of the authorities in acquisition proceedings.

10. In W.P.No.4920 of 1999, one other factor, which has to be borne in mind is that the person on whom the Notice in Form No.I was issued was not alive and therefore, there was no question of service. Since the person on whose name, the notice was issued was not alive, there is no question of refusal of notice. The statement of the Department that notice was refused only affirms the view of the Government with regard to the attitude of the Officers in the matter of service of notice. In this background the affixture of the notice on a placard which is said to have been embedded to the land cannot be said to be a proper service of notice. In view of the above, it is clear that there is no service of notice in Form No.I in terms of Rule 3(1) of the Rules and there is a clear violation of Section 4(2 () of the Act. For the said violation, the Notification under challenge deserve to be set aside.

11. Learned Government Advocate at this point of time submits that in the event of the Court interfering with the acquisition proceedings for the above stated reasons, liberty may be given to the authorities to pursue the matter afresh, if required.

12. The violation of the statutory provision is a good ground to interfere with the acquisition proceedings and accordingly, the Notification issued under Section 4(1) of the Land Acquisition Act in so far as the petitioners' lands are concerned, is set aside. The respondents are at liberty to proceed with the matters afresh, if so advised. All the three writ petitions are ordered accordingly. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The District Collector,
Madurai.

2.The Special Tahsildar
(Land Acquisition),
Adi Dravidars Welfare, Unit-I,
Collectorate Buildings,
Madurai.

+3ccs to the Govt. Pleader Sr 7400 to 7402
+3ccs to Mr.M.V.Venkataseshan,Advocate Sr 7524 to 7526

RA (CO)
Km/21.2.

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